

Application No.: 09/485,225

Docket No.: 20061-00088-US

§ 103(a) as being unpatentable over Einhorn in view of Tracy and Lacore as previously applied and further in view of De Anfrasio (U.S. 5,638,584).

Applicant concedes that Einhorn, Tracy, Lacore, Wackerly, and De Anfrasio illustrate individual elements of the present simple hook construction. However, it is applicant's position that the references are not reasonably combinable under § 103 to present a *prima facie* case of obviousness. In fact, combination of four references for each of the rejections is indicative of a lack of obviousness for the simple construction of the invention.

In discussing the two primary references in paragraph 6 of the Office Action, the Examiner states, with respect to Tracy and Einhorn that "since both references are hooks, one or ordinary skill in the art at the time of applicant's invention would be motivated to combine the references regardless of the method used to retaining the cord or tube or whether one hook does not have all of the elements of the other." This position is untenable since we are dealing with a crowded art wherein a multitude of hooks exist and reliance has been made on the two distinctly different constructions of Tracy and Einhorn.

Perhaps the following discussion of the primary references will shed light on the unobvious combination of Einhorn and Tracy.

#### I. EINHORN

Discloses a hanger to maintain a knot made at the end of a core. As described in the Abstract of the patent, the hanger has a body portion with a hole extending therethrough, one end of the hole being enlarged for receiving and holding therein the knot of a cord. A loop shaped portion of the hanger extends over the enlarged end of the hole. The loop shaped portion is rigidly affixed to the body portion, and serves as a hook. As discussed in column 4, line 45-column 5, line 14:

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Referring to FIG. 1, it is apparent that difficulties would be involved in forming the hanger by conventional casting techniques, due to the extension of the loop 36 over the enlarged portion 34 of the hole. In other words, it would not be possible to cast the article around a core having the shape of the hole, and then withdraw the core linearly, since the loop 36 would prevent such withdrawal of the core. If the clearance between the loop 36 and the large end of the hole is adequate, a core may be employed which can be withdrawn partially linearly, into the loop, and thence sidewardly to clear the loop. As discussed previously, however, even if the shape of the article permits this form of cast, the technique is not readily adaptable to mass production, and the dies are complicated thereby.

In order to overcome this problem, in accordance with the invention, the body portion 30 is cast without the loop portion 36, as illustrated in FIG. 5, but with an interlocking surface in the region that the loop joins the body portion. For example, as shown in FIG. 5, the interlocking surface may be comprised of a pair of projections 50 extending from the body portion. These projections 50, as illustrated in dashed lines in FIGS. 1 and 2, have narrow portions 51 where they meet the main portion of the body 32, and enlarged ends 52. The body portion 30, with projections 50, as shown in FIG. 5, may be readily formed by conventional die casting techniques. Thus, since the loop 36 is not present, a core may be provided of the same shape as the hole 31, with the body portion 30 being cast around this core. The core may then be readily linearly removed from the hole to complete the formation of the base portion. Following the casting of the body portion in this manner, the loop portion 36 is then cast onto the body portion 30, surrounding the projections 50. Due to the interlocking shape of the

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projections 50, with enlarged ends 52, the loop portion 36 is thereby firmly held and locked in a fixed position on the body portion 30.

In the preferred method of Einhorn, the article is cast with a zinc alloy. There is no suggestion in the reference of reinforcing the body portion around the hole. Also, from the quoted portion of Einhorn, it would be contrary to the object of the patent to cast the body and loop portions together.

Further, there is no suggestion of replacing the loop portion by a C-shaped portion and in fact this also would be a contrary to the intended purpose of the patent, namely a complete loop. Of course, if a suggestion of a C-shaped portion were inferred, this would present a different problem of withdrawing the core used for casing the body portion.

## II. TRACY

As best seen in FIG. 4, the reinforcing hook 20 includes an inner sleeve 22 at the shank portion thereof, disposed within a plastic outer sleeve 24 (FIG. 2) of the coating 21. The inner sleeve 22 is formed of an integral distal end portion 23, which is bent into a tubular configuration and spot-welded at 25 to maintain the tubular configuration.

As stated in the Abstract of this reference, the stretchable tie-down device includes an elongated resilient stretchable tube, which is thin walled and pliable to collapse and flatten readily when pressed against a surface.

It would not be obvious (and probably not possible) to shape the end of the tube as a knot to maintain the end in the hole of the body portion and consequently, the end is maintained by welding a plug in the end of the tube and coating the plug with a plastic material.

For the reasons discussed, the rejections attempt to combine bits and pieces of totally different hook structures, without a reasonable teaching or suggestion in the cited prior art. This can only be done by the inadmissible reliance upon hindsight.

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"...[C]ase law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. See *In re Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. 'Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.' *Id.* 'When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references.' *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998) (citing *In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987))." *Ecolochem, Inc. v. Southern California Edison Company* (CAFC 2000).

In view of the above, consideration and allowance are, therefore, respectfully solicited.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

The Director is hereby authorized to charge any fees, or credit any overpayment, associated with this communication, including any extension fees, to CBLH Deposit Account No. 22-0185.

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Respectfully submitted,

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